



Corporate Income Tax HB 459 by Representative Cannon SB 1112 by Senator Altman

Background

Every year, the Legislature passes a “piggyback” tax bill that conforms Florida’s corporate income tax code to the federal code by picking up annual changes made by Congress. Without the bill, businesses would have to keep two sets of books and track two different tax systems. Piggybacking also allows for better auditing by the state, which depends heavily on federal audits.

Without this bill, taxpayers who choose to take part in the federal tax breaks will be subject to an increase in state taxes.

During the 2008 General Session, the Florida Legislature passed what is normally a routine corporate income tax bill, House Bill (HB) 5065. Due to an oversight, HB 5065 had the unintended effect of denying corporate taxpayers the ability to fully depreciate assets for Florida tax purposes. If Florida businesses choose to take advantage of the federal tax breaks, they will be subject to an increase in state taxes, which was not the intent of the legislation.

The federal bonus depreciation is a *speedup*, meaning a larger deduction in the first year and smaller deductions in the following years. However, Florida taxpayers who take advantage of the federal bonus depreciation will have a permanent loss of state depreciation, a problem that this bill remedies.

Current Situation

On November 18, 2008, the President of the Senate and the Speaker of the House sent a letter to the Department of Revenue’s Executive Director expressing their intent to fix the legislation passed during the 2008 Legislative Session and to reiterate that HB 5065 did not intend to subject Florida businesses to an increase in state taxes if they choose to take advantage of the federal tax breaks. On December 10, 2008, the Department of Revenue adopted Emergency Rule 12CER08-31, which expires on March 10, 2009, to provide a methodology for taxpayers to take advantage of the federal tax breaks and to adjust their Florida tax returns in order to not be penalized.

The Legislature has drafted HB 459/SB 1112 to correct the problem caused by HB 5065. HB 459 by Representative Cannon replaces the statutory changes made in HB 5065 with a new process to account for bonus depreciation and additional expensing in the Florida tax return. The bill spreads out the amount of bonus depreciation or additional expensing claimed by a taxpayer on the federal return over a 5-year period on the Florida return. SB 1112 accomplishes the same result over a 7-year period.

These changes will allow taxpayers to take full advantage of the depreciation deductions to which they are entitled. The bill takes effect upon becoming law and operates retroactively to January 1, 2008.